

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-7-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.1819 of 2006

and

MP No.1 of 2006

1.Junior Engineer (O & M)

Rural, TNEB, Palacode,
Dharmapuri District.

2.The Executive Engineer (O & M)

TNEB Palacode
Dharmapuri District

3.The Superintending Engineer

TNEB, Dharmapuri District.

... Petitioners/Petitioner/
Appellants

vs

Elumalai @ Muniappan

... Respondent/Respondent
Respondent

Civil revision petition preferred under Sec.115 of the Code of Civil Procedure against the fair and decreetal order dated 15.9.2006 and made in I.A.No.57 of 2006 in A.S.No.18 of 2006 on the file of the Subordinate Judge at Dharmapuri.

For Petitioners : Mr.N.Muthuswami

For Respondent : No appearance

ORDER

Challenge is made to an order of the learned Subordinate Judge, Dharmapuri, made in I.A.No.57 of 2006 in A.S.No.18 of 2006.

2.The Court heard the learned Counsel for the petitioners, When the matter was taken up for enquiry, there was no representation on the side of the respondent.

3.After hearing the Counsel and looking into the materials available and in particular, the order under challenge, it would be quite clear that originally, a suit in O.S.No.222/2000 was filed by the respondent herein against the revision petitioners herein who were representing the Electricity Board, for a relief of mandatory injunction to effect the electricity service connection. On contest, a decree came to be passed on 20.11.2002, and in preferring an appeal, there was a delay of 443 days. An application to condone the said delay was filed in I.A.No.147 of 2004. The said application on contest, was allowed on condition of payment of

cost. The cost has been paid. Thus, the appeal was taken on file. Pending the appeal, I.A.No.57 of 2006 was filed seeking stay of the execution proceedings. Since E.P.No.36 of 2004 filed by the respondent/plaintiff, pointing to the disobedience of the order of mandatory injunction, was pending, and he sought execution by way of arrest and sending the officials of the Electricity Board to prison, stay was asked for. The lower Court has dismissed the application for stay pointing to the reasons among other reasons, that while filing the appeal in A.S.No.18 of 2006, there was a delay of 443 days, and had the petitioners herein been really interested in filing the appeal, they would have preferred the same in time, but not done so, and hence, stay should not be granted.

4.After looking into the circumstances and also the reason adduced by the Court below, this Court is of the considered opinion that the order of the Court below has got to be made undone by upsetting the same. It is not in controversy that the decree passed in the original suit by the trial Court, was being challenged in the appeal. The trial Court has granted mandatory injunction to effect electricity service connection. The appellants in that appeal, who are the revision petitioners herein, thought it fit to prefer an appeal. Accordingly, the appeal was filed. It is true that there was a delay of 443 days in making so. But, in I.A.No.147 of 2004, the delay was condoned on condition of payment of cost, and on payment of cost, the appeal was taken on file. If to be so, only after the exercise of the judicial mind, the Court below would have allowed the application by condoning such a delay and ordered payment of cost. Having allowed the application for condonation of delay, there was nothing for the Court below to comment on the reason of delay for dismissing the application for stay. Added circumstance is the pendency of the E.P., in which the respondent/plaintiff has sought for the arrest of the Electricity Board officials for the disobedience of the orders of the Court. Under the circumstances, this Court is of the view that stay is a must. If not stay is granted, then the E.P. would be further proceeded with, and there is no meaning in keeping the appeal pending before the lower Court. It is a fit case where stay should have been granted since the circumstances warrant so.

5.Hence, the order of the lower Court is set aside. I.A.No.57 of 2006 is allowed, and stay is granted. However, the lower Court is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected MP is closed.

nsv

Sd/
Asst. Registrar

/true copy/

To:

1.The Subordinate Judge
Dharmapuri

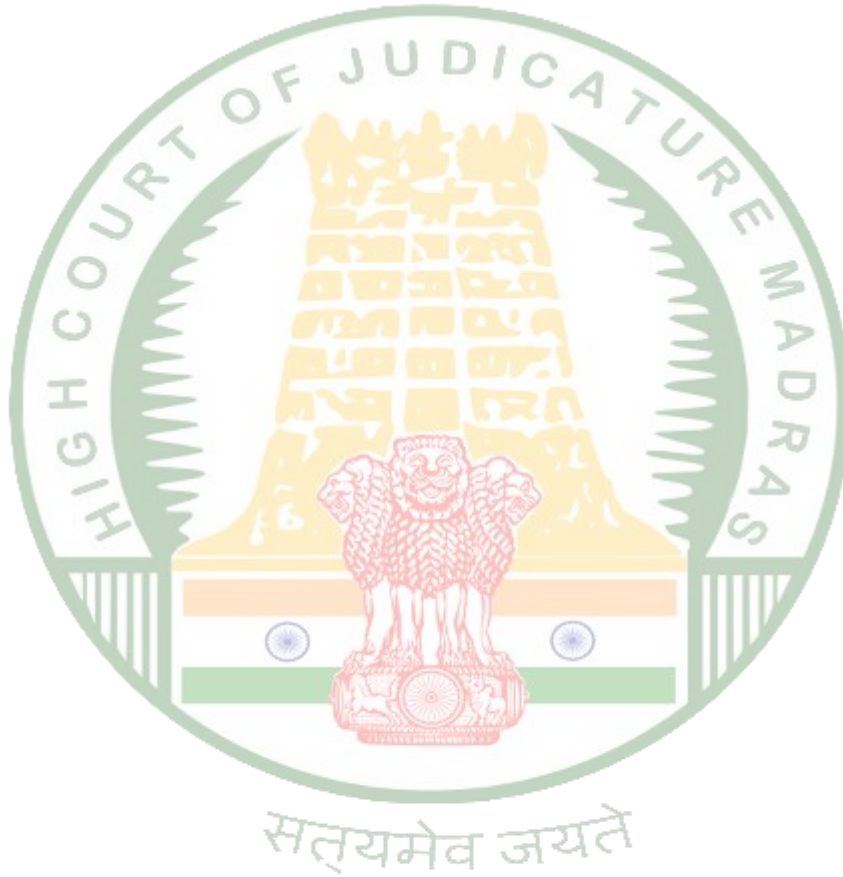
+ One cc to Mr. N. Muthumswami, Advocate sR 45867

+ One cc to Mr. R. Selvakumar, Advocate sR 45861

BV (co)

sg 2/8/07

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